

## EXHIBIT A

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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego

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Clerk of the Superior Court  
By Jessica Pascual, Deputy Clerk

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7 Attorneys for Plaintiff,  
8 ANTHONY LAINO

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

11 ANTHONY LAINO, an individual,

) Case No.: 37-2016-00001682-CU-VWT-CTL

12 Plaintiff,

) **PLAINTIFF'S COMPLAINT FOR:**

13 v.

14 FOX RESTAURANT CONCEPTS, LLC an  
15 unknown business entity, and DOES 1 through  
16 25, Inclusive,

17 Defendants.

- ) 1. FAILURE TO PROVIDE MEAL  
PERIODS [Cal. Labor Code § 512; and  
8 Cal. Code of Regulations §  
11050(11)];  
2. FAILURE TO PROVIDE REST  
PERIODS [226.7; and 8 Cal. Code of  
Regulations § 11050(12)];  
3. FAILURE TO PAY REGULAR AND  
OVERTIME WAGES [Cal. Labor  
Code §§ 204, 510 and 1194];  
4. FAILURE TO PAY REPORTING  
TIME [8 Cal. Code of Regulations §  
11050(5)];  
5. FAILURE TO PAY WAGES UPON  
TERMINATION OR RESIGNATION  
[Cal. Labor Code §§ 201, 202, and  
203];  
6. RETALIATION [Cal. Labor Code §  
1102.5];  
7. RETALIATION [Cal. Labor Code §  
98.6];  
8. WRONGFUL TERMINATION IN  
VIOLATION OF PUBLIC POLICY;  
9. UNFAIR COMPETITION [Cal. Bus.  
& Prof. Code § 17200 et seq.];

28 **[JURY TRIAL DEMANDED]**

1 COMES NOW, the plaintiff alleging against Defendants as follows:

2 **PARTIES AND**

3 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

- 4 1. Plaintiff ANTHONY LAINO, (hereinafter "Plaintiff" or "Mr. Laino") is, and at all times  
5 relevant herein was, a resident of the County of San Diego in the State of California.
- 6 2. Plaintiff believes and thereon alleges that at all times relevant herein, Defendant FOX  
7 RESTAURANT CONCEPTS, LLC (hereinafter "FRC") is a business entity, form unknown.  
8 On information and belief, FRC is doing business in the State of California, County of San  
9 Diego, under the fictitious name, "TRUE FOOD KITCHEN".
- 10 3. Plaintiff believes and thereon alleges that FRC operates restaurants in several states,  
11 including California.
- 12 4. Plaintiff believes and thereon alleges that FRC operates "True Food Kitchen Fashion  
13 Valley", a restaurant located at 7007 Friars Road, unit 394, San Diego, CA 92108 (hereafter  
14 referred to as "THE RESTAURANT").
- 15 5. Plaintiff is ignorant to the true names and capacities of Defendants sued herein as DOES 1  
16 through 25, and therefore sues these Defendants by such fictitious names. Plaintiff will  
17 amend this Complaint to allege the true names and capacities when they are ascertained.
- 18 6. Plaintiff believes and thereon alleges that each "Doe" Defendant is responsible in some  
19 manner for the occurrences herein alleged, and Plaintiff's injuries and damages as herein  
20 alleged are directly, proximately and/or legally caused by Defendants and their acts.
- 21 7. Plaintiff is informed and believes and thereon alleges that the aforementioned DOES are  
22 somehow responsible for the acts alleged herein as the agents, employers, representatives or  
23 employees of other named Defendants, and in doing the acts herein alleged were acting  
24 within the scope of their agency, employment or representative capacity of said named  
25 Defendants.
- 26 8. The tortious acts and omissions alleged herein were performed by Defendants' management  
27 level employees. Defendants allowed and/or condoned a continuing pattern of unlawful  
28 practices in violation of the California Labor Code, and have caused, and will continue to

- cause, Plaintiff's economic damage in an amount to be proven at trial.
9. As a further proximate result of Defendants' unlawful and intentional actions, and each of  
their agents, against Plaintiff as alleged herein, Plaintiff has been harmed in that he suffered  
emotional pain, mental anguish, loss of enjoyment of life, and emotional distress.
10. Defendants committed these acts alleged herein maliciously, fraudulently, and oppressively,  
and with the wrongful intention of injuring Plaintiff, and acted with an improper and evil  
motive amount to malice or despicable conduct. Alternatively, Defendants' wrongful  
conduct was carried out with a conscious disregard for Plaintiff's rights.

#### SPECIFIC FACTUAL ALLEGATIONS

11. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the  
preceding paragraphs as though fully set forth herein.
12. On or about August 20, 2012, Plaintiff was hired by Defendants to work as a server at THE  
RESTAURANT.
13. During the entire period of employment, Plaintiff was paid minimum wage plus tips. When  
Plaintiff was first hired, minimum wage was \$8.00 an hour. Beginning on January 1<sup>st</sup>, 2014  
minimum wage was raised to \$9.00 an hour, at which point Plaintiff's base wage was raised  
to \$9.00 an hour.
14. At THE RESTAURANT servers were not relieved for breaks, either for rest periods or meal  
periods by extra server staff. Servers were responsible for maintaining service on the tables  
in their assigned areas of THE RESTAURANT. Due to the fact that THE RESTAURANT  
was consistently busy this meant that servers were unable to take rest periods or meal  
periods.
15. Servers at THE RESTAURANT were disciplined if they took a break as this caused a lapse  
of service on a table or tables the server was assigned to. On at least one occasion, Plaintiff  
was disciplined for taking a break when tables assigned to him became busy unbeknownst to  
him while he was on break. Plaintiff observed other servers being disciplined for lapses in  
service on their tables while they took breaks on multiple occasions.
16. Management at THE RESTAURANT required the servers to clock-out for thirty minutes a

- shift for meal periods. If servers did not do so they would be disciplined.
17. Plaintiff on numerous occasions told members of the management team that he was not able to take his meal period but had to clock-out and continue to work due to the lack of relief from providing service to his tables. On these occasions management told Plaintiff that he had to clock-out even though he was unable to take a meal period.
18. On at least one occasion, management told servers that if THE RESTAURANT were to hire additional staff to allow servers to be relieved during rest and meal periods that these additional staff members would have to be paid from the servers tips.
19. Due to the fact that Plaintiff was required to clock-out for meal periods but was unable to break he is unpaid for regular wages.
20. Due to the fact that Plaintiff was required to clock-out for meal periods but was unable to break he is unpaid for overtime wages for days in which the uncounted time worked off of the clock resulted in Plaintiff working more than 8 hours in the day or 40 hours in the week.
21. Defendants operated a tip pooling policy at THE RESTAURANT. The policy required the servers to pay 4% of gross receipts paid by customers on the tables assigned to each server respectively. The Defendants would then distribute this money to the bussers, who they referred to as "back servers", and bartenders.
22. The servers had to pay the 4% of gross receipts on tables even when they were not tipped on a table. Plaintiff spoke with management about his concerns regarding having to pay money to the house on tables in which he did not receive a gratuity and was told that this was the policy and the management could not do anything for him.
23. Plaintiff believed that the tip pooling policy, as well as the break policies, were illegal and began doing research online on his own. After finding some information which supported his suspicion that the policies were illegal, Plaintiff spoke to personnel at the Division of Labor Standards Enforcement. Plaintiff understood from his conversations with personnel at the Division of Labor Standards Enforcement that Defendants' policies were illegal.
24. Beginning on or around early May, 2015, Plaintiff began communicating with co-workers regarding his concern that the employer's policies were illegal. The Plaintiff regularly

- 1 arrived to work an hour prior to his shifts to eat. He would do so in the employee break area.  
2 While eating prior to his shifts he would discuss his concerns with the employer policies.
- 3 25. Plaintiff is informed and believes and thereon alleges that Defendants and management at  
4 THE RESTAURANT were aware of his communications with fellow employees regarding  
5 his concerns with the tip pooling policy and the break policy at THE RESTAURANT.
- 6 26. On May 13, 2015, at the end his shift Plaintiff asked the manager on duty not to take the  
7 portion of the tips paid out to the bartenders from gratuities paid to his table. Plaintiff  
8 explained that he felt the tip pooling policy was illegal and that he was not satisfied with the  
9 performance of the bartenders of that shift with regards to preparing drinks for tables  
10 Plaintiff was serving. The manager on duty obliged Plaintiff and did not take the 2% gross  
11 receipts from his gratuities that night that would normally be distributed by THE  
12 RESTAURANT to the bartenders.
- 13 27. On May 14, 2015 Plaintiff again asked the manager on duty not to take the portion of the  
14 tips paid out to the bartenders from his gratuities. Plaintiff again explained that he felt the tip  
15 pooling policy was illegal and that he was not satisfied with the performance of the  
16 bartenders that shift with regards to preparing drinks for tables Plaintiff was serving. The  
17 manager on duty obliged Plaintiff and did not take the 2% gross receipts from his gratuities  
18 that night that would normally be distributed by THE RESTAURANT go to the bartenders.
- 19 28. On May 15, 2015, Plaintiff was accosted by management prior to his coming on shift. After  
20 Plaintiff explained his concerns that the tip policy was illegal and his dissatisfaction with the  
21 service of the bartenders, management sent him home.
- 22 29. On May 16, 2015, Plaintiff was again sent home prior working his shift.
- 23 30. On May 18, 2015, Plaintiff called human resources and told human resources, among other  
24 things, his concerns that he believed the tip pooling policy to be illegal, and his belief that  
25 the break policies as implemented at THE RESTAURANT was illegal. Plaintiff told human  
26 resources that he had spoken to the Division of Labor Standards Enforcement, and raised his  
27 concerns that Defendants' policies were illegal.
- 28 31. On May 19, 2015, Plaintiff reported to work for his scheduled shift, and was fired prior to

- 1 working.
- 2 32. Plaintiff is informed and believes, and thereon alleges that his expressing his reasonable  
3 belief that the Defendants' tip pooling was illegal, was a substantial motivating factor in  
4 Defendants' decision to terminate his employment.
- 5 33. Plaintiff is informed and believes, and thereon alleges that his expressing his reasonable  
6 belief that the Defendants' break policy as implemented at THE RESTAURANT was  
7 illegal, was a substantial motivating factor in Defendants' decision to terminate his  
8 employment.
- 9 34. Plaintiff is informed and believes, and thereon alleges that his expressing his concerns that  
10 Defendants' break and tip pooling policies were unfair and illegal with his fellow co-  
11 workers was a substantial motivating factor in Defendants' decision to terminate his  
12 employment.
- 13 35. Plaintiff is informed and believes, and thereon alleges that his communication with the  
14 Division of Labor Standards Enforcement regarding his concerns of the legality of the tip  
15 pooling policy and the break policies at THE RESTAURANT was a substantial motivating  
16 factor in Defendants' decision to terminate his employment.
- 17 36. In addition, Defendants failed to pay Plaintiff all outstanding overtime wages he earned  
18 upon his termination, in violation of Labor Code section 201.

19 **FIRST CAUSE OF ACTION**

20 **FAILURE TO PROVIDE MEAL PERIODS (All Defendants)**

21 [Cal. Labor Code §§ 512, 226.7; and 8 Cal. Code of Regulations § 11050(11)]

- 22 37. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the  
23 preceding and subsequent paragraphs.
- 24 38. No employer shall employ any person for a work period of more than five hours without a  
25 meal period of not less than thirty minutes. (Cal. Labor Code §§ 512, 226.7, and 8 Cal. Code  
26 of Regulations § 11050(11)).
- 27 39. If an employer fails to provide an employee a proper meal period, the employer shall pay the  
28 employee one hour of pay at the employee's regular rate of compensation for each workday

that the rest period is not provided. (Cal. Labor Code § 226.7(b)).

40. Mr. Laino did not receive proper meal periods during his employment with Defendants. Mr. Laino was not authorized to or permitted to take meal periods. In fact, Mr. Laino and his fellow servers would be disciplined if their taking a break caused service to the table assigned to them to be disrupted. Defendants told the server staff that if they wanted the employer to hire extra staff to cover servers while they broke that the servers would have to pay this extra staff from the servers' tip earnings.

41. Mr. Laino informed management at THE RESTAURNT on several occasions that it was not possible for him to take a meal break without disrupting service to his assigned tables due to the high volume of business at THE RESTAURANT and the lack of extra server staff to relieve him of his assigned tables.

42. As a direct (proximate) result of the Defendants' conduct, Mr. Laino is entitled to one additional hour of pay at his regular rate of compensation for each day that a proper meal period was not provided.

43. Plaintiff will amend this complaint when the exact amount of wages owed becomes known or according to proof at trial.

## **SECOND CAUSE OF ACTION**

## **FAILURE TO PROVIDE REST PERIODS (All Defendants)**

[Cal. Labor Code § 226.7, and 8 Cal. Code of Regulations § 11050(12)]

44. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the preceding and subsequent paragraphs.

45. No employer shall employ any person for a work period of four hours without a rest period of not less than ten minutes. (Cal. Labor Code §, 226.7, and 8 Cal. Code of Regulations § 11050(11)).

46. If an employer fails to provide an employee a proper rest period, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. (Cal. Labor Code § 226.7(b)).

1 47. Mr. Laino did not receive proper rest periods during his employment with Defendants. Mr.  
2 Laino was not authorized to or permitted to take rest periods. In fact, Mr. Laino and his  
3 fellow servers would be disciplined if their taking a break caused service to the table  
4 assigned to them to be disrupted. Defendants told the server staff that if they wanted the  
5 employer to hire higher extra staff to cover servers while they broke that the servers would  
6 have to pay this extra staff from the servers' tip earnings.

7 48. Mr. Laino informed management at THE RESTAURNT on several occasions that it was not  
8 possible for him to take rest breaks without disrupting service to his assigned tables due to  
9 the high volume of business at THE RESTAURANT and the lack of extra server staff to  
10 relieve him of his assigned tables.

11 49. As a direct (proximate) result of the Defendants' conduct, Mr. Laino is entitled to one  
12 additional hour of pay at his regular rate of compensation for each day that a proper meal  
13 period was not provided.

14 50. Plaintiff will amend this complaint when the exact amount of wages owed becomes known  
15 or according to proof at trial.

### **THIRD CAUSE OF ACTION**

## **FAILURE TO PAY REGULAR AND OVERTIME WAGES (All Defendants)**

**[California Labor Code §§ 204, 510, and 1194]**

19 51. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the  
20 preceding and subsequent paragraphs.

21 52. Labor Code § 1194 establishes an employee's right to recover unpaid wages, including  
22 minimum and overtime compensation and interest thereon, together with the costs of suit.  
23 Labor Code § 1197 states that the payment of a wage less than the minimum wage fixed by  
24 the Industrial Welfare Commission is unlawful. Labor Code § 1198 further states that the  
25 employment of an employee for longer hours than those fixed by the Industrial Welfare  
26 Commission is unlawful.

- 1 53. Labor Code § 510 further provides that employees in California shall not be employed more
  - 2 than eight (8) hours per workday and more than forty (40) hours per workweek unless they
  - 3 receive additional compensation beyond their regular wages in amounts specified by law.
  - 4 54. Defendants maintained a practice of not providing meal periods, but forced servers,
  - 5 including Mr. Laino, to clock-out as if to take a break and but work through their break. As
  - 6 such, not only did Mr. Laino not receive required rest breaks, but also was not paid for thirty
  - 7 minute periods on most days he worked for the Defendants.
  - 8 55. As a consequence of the Defendants requiring servers, including Mr. Laino, to clock-out and
  - 9 work through breaks Mr. Laino worked off of the clock and is owed unpaid wages.
  - 10 56. As a consequence of the Defendants requiring servers, including Mr. Laino to clock-out and
  - 11 work through breaks some of Mr. Laino's hours were not recorded, and therefore, overtime
  - 12 worked was not registered in the payroll system and not paid.
  - 13 57. As a direct (proximate) result of Defendant's illegal deduction and/or willful failure to pay
  - 14 wages due and owing, Plaintiff is entitled to recoup unpaid wages, penalties, a waiting time
  - 15 penalty, costs, interest and attorney's fees. (California Labor Code §§ 201, 202, 203, 204,
  - 16 206, 210, 216, 218.5, 218.6, 226 and 1194).
  - 17 58. As a direct (proximate) result of Defendant's conduct, Plaintiff has incurred and continues to
  - 18 incur reasonable attorney's fees, costs, and interest.
  - 19 59. Plaintiff still has not received the full amount of his final paycheck due to Defendant's
  - 20 illegal deduction of wages. Plaintiff is entitled to a waiting time penalty pursuant to
  - 21 California Labor Code § 203.
  - 22 60. Plaintiff will amend this complaint when the exact amount of wages owed becomes known
  - 23 or according to proof at trial.

## **FOURTH CAUSE OF ACTION**

# **FAILURE TO PAY REPORTING TIME WAGES**

**[8 Cal Code of Regulations California Labor Code § 11050(5)]**

- 27 61. Plaintiff re-alleges and incorporates herein by reference each and every allegation in the  
28 preceding and subsequent paragraphs.

1       62. California Industrial Welfare Commission Wage Order 5, which covers restaurants, requires  
2           that if an employee is required to report to work, but is not put to work the employee shall  
3           be paid for half the employee's usual or scheduled day's work. 8 Cal Code of Regulations  
4           California Labor Code § 11050(5).

5 | 63. Mr. Laino's typical shift was no less than six hours a shift.

6 64. Defendants called Mr. Laino to work, but did not put him to work on May 15<sup>th</sup>, 2015, May  
7 16<sup>th</sup>, 2015, May 19<sup>th</sup>, 2015.

8 65. Defendants paid Mr. Laino two hours for May 15<sup>th</sup>, 2015. Given that this is less than half of  
9 Mr. Laino's six hour shift, it was an insufficient number of hours paid.

10 | 66. Defendants paid Mr. Laino no reporting time wages for either May 16<sup>th</sup> or May 19<sup>th</sup>, 2015.

11 67. As a direct (proximate) result of Defendant's willful failure to pay wages due and owing,  
12 Plaintiff is entitled to recoup unpaid wages, penalties, a waiting time penalty, costs, interest  
13 and attorney's fees. (California Labor Code §§ 201, 202, 203, 204, 206, 210, 216, 218.5,  
14 218.6, 226 and 1194).

15 68. As a direct (proximate) result of Defendant's conduct, Plaintiff has incurred and continues to  
16 incur reasonable attorney's fees, costs, and interest.

17 69. Plaintiff still has not received the full amount of his final paycheck due to Defendant's  
18 illegal deduction of wages. Plaintiff is entitled to a waiting time penalty pursuant to  
19 California Labor Code § 203.

20 70. Plaintiff will amend this complaint when the exact amount of wages owed becomes known  
21 or according to proof at trial.

## **FIFTH CAUSE OF ACTION**

## **FAILURE TO PAY WAGES UPON TERMINATION OR RESIGNATION**

### **[California Labor Code §§ 201, 202, and 203]**

25 71. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the  
26 preceding paragraphs as though fully set forth herein.

27 | 72. At all times relevant herein, Plaintiff was an employee of Defendants.

28 73. Plaintiff was terminated from his employment with Defendants. Defendants failed to pay

1 Plaintiff all wages owed to him on his last day of employment, in violation of Labor Code  
2 section 201.

3 74. Alternatively, should the trier of fact find that Plaintiff resigned from his employment with  
4 Defendants, Defendants failed to pay Plaintiff all wages owed to him within 72 hours of his  
5 resignation, in violation of Labor Code section 202.

6 75. In addition to all other damages properly recoverable, Plaintiff is entitled to penalties  
7 pursuant to Labor Code section 203, an award of costs and attorney fees pursuant to Labor  
8 Code section 218.5, and an award of interest pursuant to Labor Code § 218.6.

9 **SIXTH CAUSE OF ACTION**

10 **RETALIATION**

11 **[California Labor Code § 1102.5]**

12 76. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the  
13 preceding and subsequent paragraphs as though fully set forth herein.

14 77. At all times relevant herein, Plaintiff was an employee of Defendants.

15 78. Plaintiff disclosed information to Defendants that he reasonably believed constituted a  
16 violation of the California Labor Code and California Code of Regulations, as stated herein.

17 79. Plaintiff's disclosure of such information was a substantial motivating factor in Defendants'  
18 decision to terminate his employment.

19 80. Plaintiff communicated with the Division of Labor Standards Enforcement regarding his  
20 belief that both the tip pooling policies and the break policies as enforced by Defendants at  
21 THE RESTAURANT were illegal.

22 81. Plaintiff communicated to Defendants' through FRC's human resource department that he  
23 had communicated his concerns regarding Defendants' policies to the Division of Labor  
24 Standards Enforcement. This is protected activity under Labor Code 98.6(a). The day after  
25 Plaintiff told human resources he communicated with the Division of Labor Standards  
26 Enforcement regarding his concerns that Defendants' policies were illegal, Defendants fired  
27 Plaintiff.

28 82. Plaintiff believes and thereon alleges that Plaintiff's communication regarding the his belief

that Defendants' policies were illegal to the Division of Labor Standards Enforcement was a substantial motivating factor in Defendants' decision to terminate him employment, or otherwise discriminate against him in the terms and conditions of his employment.

4 83. As a direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has sustained  
5 and continues to sustain substantial losses in earnings, employment benefits, employment  
6 opportunities, and Plaintiff has suffered other economic losses in an amount to be  
7 determined at time of trial. Plaintiff has sought to mitigate these damages.

8 84. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered  
9 and continues to suffer humiliation, emotional distress, loss of reputation, and mental and  
10 physical pain and anguish, all to his damage in a sum according to proof.

11 85. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled to  
12 recover punitive and exemplary damages in an amount commensurate with Defendant's  
13 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.

14 86. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled  
15 to a \$10,000 penalty for each violation of California Labor Code Section 1102.5, pursuant to  
16 California Labor Code Section 1102.5(f), and attorneys' fees pursuant to Code of Civil  
17 Procedure section 1021.5.

## **SEVENTH CAUSE OF ACTION**

## **RETALIATION**

**[California Labor Code § 98.6]**

21 87. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the  
22 preceding and subsequent paragraphs as though fully set forth herein.

23 | 88. At all times relevant herein, Plaintiff was an employee of Defendants.

24 89. Plaintiff disclosed information regarding his wages and conditions of employment to his  
25 fellow co-workers. In this case, Plaintiff communicated his concerns that the tip pooling  
26 policy maintained by Defendants was unfair and illegal, and that the break policy as  
27 implemented at THE RESTAURANT was illegal. This is protected activity under Labor  
28 Code §§ 232, and 232.5, and is actionable through Labor Code § 98.6(a).

- 1       90. Plaintiff believes and thereon alleges that Plaintiff's disclosure and communication of such  
2 information was a substantial motivating factor in Defendants' decision to terminate him  
3 employment, or otherwise discriminate against him in the terms and conditions of his  
4 employment.
- 5       91. Plaintiff communicated with the Division of Labor Standards Enforcement regarding his  
6 belief that both the tip pooling policies and the break policies as enforced by Defendants at  
7 THE RESTAURANT were illegal.
- 8       92. Plaintiff communicated to Defendants' through FRC's human resource department that he  
9 had communicated his concerns regarding Defendants' policies to the Division of Labor  
10 Standards Enforcement. This is protected activity under Labor Code 98.6(a). The day after  
11 Plaintiff told human resources he communicated with the Division of Labor Standards  
12 Enforcement regarding his concerns that Defendants' policies were illegal, Defendants fired  
13 Plaintiff.
- 14      93. Plaintiff believes and thereon alleges that Plaintiff's communication regarding the his belief  
15 that Defendants' policies were illegal to the Division of Labor Standards Enforcement was a  
16 substantial motivating factor in Defendants' decision to terminate him employment, or  
17 otherwise discriminate against him in the terms and conditions of his employment.
- 18      94. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has sustained  
19 and continues to sustain substantial losses in earnings, employment benefits, employment  
20 opportunities, and Plaintiff has suffered other economic losses in an amount to be  
21 determined at time of trial. Plaintiff has sought to mitigate these damages.
- 22      95. As a further direct, foreseeable, and proximate result of Defendant's conduct, Plaintiff has  
23 suffered and continues to suffer humiliation, emotional distress, loss of reputation, and  
24 mental and physical pain and anguish, all to him damage in a sum according to proof.
- 25      96. As a result of Defendant's deliberate, outrageous, despicable conduct, Plaintiff is entitled to  
26 recover punitive and exemplary damages in an amount commensurate with Defendant's  
27 wrongful acts and sufficient to punish and deter future similar reprehensible conduct.
- 28      97. In addition to such other damages as may properly be recovered herein, Plaintiff is entitled

1 to a \$10,000 penalty for each violation of California Labor Code Section 1102.5, pursuant to  
 2 California Labor Code Section 98.6(b)(3), and attorneys' fees pursuant to Code of Civil  
 3 Procedure section 1021.5.

4 **EIGHTH CAUSE OF ACTION**

5 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

- 6 98. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the  
 7 preceding and subsequent paragraphs as though fully set forth herein.
- 8 99. At all times relevant herein, Plaintiff was an employee of Defendants.
- 9 100. Defendants wrongfully terminated Plaintiff's employment.
- 10 101. Plaintiff believes and thereon alleges that his opposition to Defendants' tip pooling policy  
 11 and break policies was a substantial motivating reason for his termination.
- 12 102. Plaintiff had a good faith belief that Defendants' tip pooling policy and break policies were  
 13 unlawful, and communicated his belief that the policies were unlawful to Defendants.
- 14 103. Defendants' conduct in terminating Plaintiff's employment on the basis of his opposition to  
 15 Defendants' tip pooling policy and break policies constituted a blatant violation of the laws  
 16 and public policy of the State of California, embodied in the California Labor Code, and was  
 17 in violation of California law pursuant to *Gould v Maryland Sound Industries, Inc.* (1995)  
 18 31 Cal App 4<sup>th</sup> 1137.
- 19 104. Plaintiff believes and thereon alleges that his communication of his concerns that the  
 20 Defendants' tip pooling policy and break policies were both unlawful and unfair to his  
 21 fellow co-workers was a substantial motivating reason for his termination.
- 22 105. Defendants' conduct in terminating Plaintiff's employment on the basis that he was  
 23 communicating with co-workers about wages and conditions of employment is a blantant  
 24 violation of the laws and public policy of the State of California, embodied in the California  
 25 Labor Code, and was in violation of California law, pursuant to Labor Code sections 232,  
 26 and 232.5.
- 27 106. Plaintiff communicated with the Division of Labor Standards Enforcement regarding his  
 28 belief that both the tip pooling policies and the break policies as implemented by Defendants

1 at THE RESTAURANT were illegal.

2 107. Plaintiff communicated to Defendants' through FRC's human resource department that he  
3 had communicated his concerns regarding Defendants' policies to the Division of Labor  
4 Standards Enforcement. This is protected activity under Labor Code 98.6(a), and 1102.5(a).  
5 The day after Plaintiff told human resources he communicated with the Division of Labor  
6 Standards Enforcement regarding his concerns that Defendants' policies were illegal,  
7 Defendants fired Plaintiff.

8 108. Plaintiff believes and thereon alleges that Plaintiff's communication regarding the his belief  
9 that Defendants' policies were illegal to the Division of Labor Standards Enforcement was a  
10 substantial motivating factor in Defendants' decision to terminate his employment, or  
11 otherwise discriminate against him in the terms and conditions of his employment.

12 109. Defendants' conduct in terminating Plaintiff's employment on the basis of his  
13 communicating with the Division of Labor Standards Enforcement regarding his belief that  
14 Defendants' policies violated California law constituted a blatant violation of the laws and  
15 public policy of the State of California, embodied in the California Labor Code at section  
16 98.6, and section 1102.5.

17 110. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has sustained  
18 and continues to sustain substantial losses in earnings, employment benefits, employment  
19 opportunities, and Plaintiff has suffered other economic losses in an amount to be  
20 determined at time of trial. Plaintiff has sought to mitigate these damages.

21 111. As a direct, foreseeable, and proximate result of Defendants' conduct, Plaintiff has suffered  
22 and continues to suffer humiliation, emotional distress, loss of reputation, and mental and  
23 physical pain and anguish, all to his damage in a sum according to proof.

24 112. As a result of Defendants' deliberate, outrageous, despicable conduct, and blatant violation  
25 of the laws and public policy of this State as stated herein, Plaintiff is entitled to recover  
26 punitive and damages. Plaintiff is further entitled to an award of attorneys' fees pursuant to  
27 California Code of Civil Procedure section 1021.5.

28 **NINTH CAUSE OF ACTION**

## **UNFAIR COMPETITION**

[California Business and Professions Code section 17200 *et seq.*]

- 3 113. Plaintiff re-alleges and incorporates by reference each and every allegation contained in the  
4 preceding and subsequent paragraphs as though fully set forth herein.

5 114. California Business & Professions Code section 17200 *et seq.* prohibits the engagement of  
6 any business acts or practices constituting unfair competition. Section 17200 defines “unfair  
7 competition” to mean and include “...any unlawful, unfair or fraudulent business act or  
8 practice.”

9 115. Defendants have not provided all wages owed to Plaintiff in violation of California Labor  
10 Code sections 201, 202, 203, 204, 216, 510, 512, and 1194; and have therefore, engaged in  
11 unlawful business acts or practices in violation of Business and Professions Code section  
12 17200 *et seq.*

13 116. As a direct and proximate result of Defendants’ unlawful and/or unfair business act or  
14 practices, Plaintiff has suffered an injury-in-fact and was deprived of money or property to  
15 which he has valid and cognizable claims.

16 117. The harm to Plaintiff resulting from Defendants’ unlawful business acts or practices far  
17 outweighs whatever benefits, if any, such business practices have for Defendants.

18 118. In addition to all other damages properly recoverable, Plaintiff is entitled to all restitution  
19 damages arising from Defendants’ unlawful business acts or practices, in an amount to be  
20 established according to proof plus interest.

21 119. Plaintiff is further entitled to cumulative damages pursuant to California Business and  
22 Professions Code section 17205, and an award of attorneys’ fees pursuant to California  
23 Code of Civil Procedure section 1021.5.

24 | 111

**25 | WHEREFORE** Plaintiff prays for the following relief:

- 1        2. For special damages in an amount according to proof;
  - 2        3. For mental and emotional distress damages;
  - 3        4. For back pay, front pay and other monetary relief;
  - 4        5. For penalties pursuant to California Labor Code sections 203, 98.6, and 1102.5;
  - 5        6. For cumulative damages, pursuant to California Business and Professions Code section 17205;
  - 6        7. For punitive damages in an amount necessary to make an example of and to punish defendants, and to deter future similar misconduct;
  - 7        8. For costs of suit, including attorney's fees as permitted by law, including those available pursuant to Labor Code sections 218.5, 218.6, and 1194, and California Code of Civil Procedure section 1021.5;
  - 8        9. For an award of interest, including prejudgment interest, at the legal rate as permitted by law;
  - 9        10. For such other and further relief as the Court deems proper and just under all the circumstances.

16 | PLAINTIFF, Mr. Laino demands a jury trial on all issues in this case.

DATED: January 10, 2016

LAW OFFICE OF HEWGILL AND COBB  
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